IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

OP.No. 3836 of 2003(F)

PETITIONER:

THE OTTAPPALAM CO-OPERATIVE URBAN BANK LTD., NO.F.1647, OTTAPPALAM, REPRESENTED BY ITS GENERAL MANAGER-IN-CHARGE, M. BALAKRISHNAN.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY CO-OPERATION (C) DEPARTMENT, THIRUVANANTHAPURAM.**

2. **JOINT SECRETARY, CO-OPERATION (C) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

3. **GITHAKUMARI. K., KAYARAT HOUSE, SENGUPTA ROAD, OTTAPPALAM.**

4. **RAJALAKSHMI P., SREE RAG, ALAPARAMBU ROAD, KANNIAMPURAM, OTTAPPALAM - 4.**

BY ADV. SRI.P.SANTHALINGAM for R3 & R4
SRI.S.SHARAN
SPECIAL GP(CO-OPERATIVE CASES)
BY GOVERNMENT PLEADER SRI. BASANT BALAJI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.3836/2003 F

ORDER ON C.M.P.NO.6760/2003 IN O.P.NO.3836/2003 F

DISMISSED

16/03/2007 **SD/- KURIAN JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF NOTIFICATION NO.17 DTD. 4/06/1999 OF THE BORD OF DIRECTORS OF THE BANK.**

EXT.P2: **COPY OF ORDER DTD. 5/07/1999 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES.**

EXT.P3: **COPY OF LETTER DTD. 6/12/1999 FROM THE BANK TO THE INSTITUTE OF CO-OPERATIVE MANAGEMENT.**

EXT.P4: **COPY OF THE COMMUNICATION DTD. 14/12/1999 ISSUED BY THE BANK.**

EXT.P5: **COPY OF THE COMMUNICATION DTD. 11/12/1999 ISSUED BY THE ADMINISTRATIVE SECRETARY FOR GENERAL SECRETARY OF THE NAIR SERVICE SOCIETY.**

EXT.P6: **COPY OF THE NOTICE PUBLISHED IN MATHRUBHOOMI DAILY DTD. 25/11/1999.**

EXT.P7: **COPY OF APPLICATION SUBMITTED BY THE 3RD RESPONDENT .**

EXT.P8; **COPY OF APPLICATION SUBMITTED BY THE 4TH RESPONDENT.**

EXT.P9: **COPY OF RESOLUTION NO.14 DTD. 19/01/2001 OF THE BANK.**

EXT.P10: **COPY OF PROCEEDINGS DTD. 28/03/2002 OF THE JOINT REGISTRAR.**

EXT.P11: **COPY OF JUDGMENT DTD. 21/01/2002 IN O.P.24207/2001.**

EXT.P12: **COPY OF REPRESENTATION DTD. 20/08/2002 PREFERRED BY THE 3RD RESPONDENT BEFORE THE HON'BLE MINISTER.**

EXT.P13: **COPY OF REPRESENTATION PREFERRED BY THE 3RD RESPONDENT BEFORE THE REGISTRAR DTD. 09/01/2003.**

EXT.P14: **COPY OF THE REPORT DTD. 17/09/2002 OF THE JOINT REGISTRAR.**

EXT.P15: **COPY OF THE ORDER DTD. 16/01/2003 PASSED BY THE 2ND RESPONDENT.**

/TRUE COPY/

KSS

KURIAN JOSEPH, J.

O.P.No.3836 of 2003

Dated this the 16th day of March, 2007.

JUDGMENT

The challenge is to Ext.P15 order passed by the Government. That order was passed in exercise of the appellate powers conferred on the Government under Section 83 of the Kerala Co-operative Societies Act in the appeal filed by the party respondents against Ext.P10 order passed by the Joint Registrar. The issue pertains to attempts made by respondents 3 and 4 for getting regular appointments under the petitioner Co-operative Bank. It is the stand of respondents 3 and 4 that they have been working for long in the petitioner Bank on contract basis and hence they are entitled to regularisation. The Joint Registrar as per Ext.P10 found that respondents 3 and 4 have been working in the Bank only on daily wages and that they had not enjoyed the benefits of the regular staff. It was also found that they did not successfully come out in the tests conducted for regularisation and hence they were not entitled to regularisation in the post of Clerk. On appeal, the Government though in principle agreed

with the view taken by the Joint Registrar held that on humanitarian ground their requests be allowed. I am afraid, this stand cannot be appreciated. It is a case of misplaced sympathy. There were no posts available for regularisation. Respondents 3 and 4 had participated in the regular selection process and they had not been successful for getting appointment. They were never treated as regular staff. The appointment in a co-operative society being governed by the established procedure under the Act and Rules, there cannot be any back door appointment on the ground of sympathy. There being no sanctioned posts to accommodate respondents 3 and 4, the Government cannot issue such a direction to appoint them on humanitarian ground.

Therefore I quash Ext.P15 order and allow the writ petition.

KURIAN JOSEPH, JUDGE

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